

WETLANDS COUNCIL

MINUTES

September 13, 2011

The Wetlands Council met on Tuesday, September 13, 2011 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Ryan Crosbie, Carol Henderson, James Kennedy, Russ St. Pierre, Seth Prescott, and Thomas Sloan

Absentees: Councilors: Sharon Champagne and David Thompson

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 8:23 a.m. with introductions and a quorum present.

1. Approval of Minutes

- *Councilor Henderson made a motion to approve the July 12, 2011 minutes as drafted, second by Councilor St. Pierre.*

3. Status of Appeals

Paula Scott, Appeals Clerk, reviewed the following appeals:

I. New Appeals

Docket No.: 07-03 WtC – James Watson

Subject: 1/18/07 Decision on Reconsideration Denial Wetlands File No. 2006-01302

Presiding Officer (PO): To be assigned.

Action needed: Per Nov. 13, 2007 Council Meeting Minutes "Permit has been issued. A Motion to Dismiss will be filed". A written request will be sent asking for a withdrawal.

Docket No.: 07-23 WtC – Steve Bragg

Subject: 08/09/07 Decision on Reconsideration Denial Wetlands File No. 2006-01494

Presiding Officer: Larry Morse

Action needed: Settlement was reached; a written request will be sent asking for a withdrawal.

Docket No.: 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball (assigned by AGO on January 5, 2011)

Status: On June 14, 2011, Council voted to deny LBC's Motion to Dismiss. Council also voted to continue deliberations until 60 days after reconsideration of issuance of new permit (permit issued on 4/6/11). Decision and order sent on 7/14/2011. Council may consider Motion for Summary Judgment.

Docket No.: 09-07 WtC and 09-08 WtC - Lake Sunapee Protective Association (LSPA) and Town of Newbury

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: Hearings were held on October 12, 2010; October 26, 2010; November 9, 2010; and December 14, 2010. Deliberations were held on March 8 and April 12, 2011. Decision and order being worked on.

Docket No.: 09-35 WtC – Town of Newbury

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: Deliberations held on June 14, 2011. Decision and order being worked on.

Docket No. 10-01 WtC – Julie and Earle Jenkins

Subject: 10/26/09 amended permit

Presiding Officer: Larry Ballin

Recused: Chip Kimball

Status/Action: Decision and Order are finalized.

- ***Councilor Henderson made a motion to adopt the decision, second by Councilor St. Pierre. Motion passed unanimously.***

Docket No. 10-03 WtC – Richard and Donna Mills Appeal

Subject: 1/5/10 Decision on Reconsideration, Wetlands File No. 2009-01534

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: A hearing was held on July 12, 2011 at 10:00 a.m.-appeal was denied. Decision and Order are finalized, with grammatical correction.

- ***Councilor Prescott made a motion to adopt the decision, second by Councilor Henderson. Motion passed unanimously.***

III. Hearings or PHCs Pending

Docket No.: 07-09 WtC - Derry Conservation Commission

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott (assigned by AGO)

Status: PHC was held on July 27, 2011, at 1:00 pm. Hearing scheduled for Dec. 13, 2011 at 10 a.m. per Pre-Hearing Order (PHO) issued on 8/8/11.

Docket No.: 08-53 WtC - Vintage Trust c/o Enthusiasts, Inc.

Subject: 8/7/08 Decision on Reconsideration Denial, Wetlands File No. 2006-01506

Presiding Officer: Ryan Crosby

Status: A PHC was held on July 20, 2011 at 10:00 am. Hearing scheduled for Oct 18, 2011 at 9 a.m. per PHO issued July 20, 2011

Docket No.: 08-55 WtC - Tracy Middleton Revocable Trust of 1992

Subject: 9/12/08 Reconsideration Denial, Wetlands File No. 2002-2087

Presiding Officer: Chip Kimball (assigned by AG on 8/1/11)

Status: A PHC was scheduled for July 27, 2011, at 10:00 am. Notice was issued on June 27, 2011. Motion to Continue for 30 days was received and granted on 7/21/11. Notice was issued on July 22, 2011. A PHC will be scheduled for October 26 at 10:00 a.m.

Docket No.: 09-01 WtC - Kevin Price d/b/a Ossipee Lake Marina

Subject: 12/9/08 Administrative Order

Presiding Officer: Larry Morse (assigned by AGO on October 27, 2010)

Status: The appeal has been tentatively withdrawn, by letter dated March 7, 2011, pending completion of a settlement agreement between the parties. Status request issued 7/15/11 w/ 30 days to respond.

Rec'd Status report 8/11/11-within 30 days parties will execute formal settlement and file with the Council.

Docket No.: 09-20 WtC - Dana Belletete

Subject: 3/26/09 Request for Reconsideration Denial, Wetlands File No. 2009-00366

Presiding Officer: Chip Kimball

Status: The permit at issue was issued subsequent to the filing of the appeal. Therefore, it appears that the appeal is moot and should be withdrawn. The appellant has stated to the Wetlands Bureau that he filed an appeal of an AO arising from construction related to the appeal. There is no record of a subsequent appeal on the AO. PHO issued and mailed July 27, 2011. No Hearing scheduled, Motion to Dismiss as moot is anticipated.

Councilor Sloan arrives at 8:40 a.m.

Docket No.: 09-25 WtC - Town of Hooksett

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Recused: Larry Morse

Status: A hearing was scheduled for August 23, 2011 at 9:00 a.m. Notice was issued on July 21, 2011. Motion to Continue hearing was received on July 29, 2011. Motion Granted and issued on August 4, 2011. Status request letter to be sent.

Docket No. 09-36 WtC – Brendan and Dana Keegan

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Presiding Officer: David Thompson

Status: A PHC was scheduled for April 27, 2011 at 12:00 p.m. No indication as to whether PHC occurred. Notes in file reference a 60-day stay, but there is no order granting stay. Settlement discussions ongoing but appear to have stalled b/c petitioner is waiting on info from program. Sent status request with 30 days to respond on July 18, 2011. Received DES' status update on 8/22/11. DES requests a PHC be scheduled after Sept. 2011.

Docket No. 09-44 WtC – Thomas and Joan DiPace

Subject: 10/13/09 Administrative Order No. 09-082 WD

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status/Action: A hearing was scheduled for May 24, 2011, but postponed by the PO for administrative reasons. Notice of a new hearing will be sent when a date is selected. Hearing is scheduled for 9/13/11 at 9 a.m. Notice was issued on July 21, 2011.

4. Introduction of New Counsel – Lisa English

Lisa English introduced herself as the new Appeals Attorney for the Wetlands Council, replacing Atty. Anthony Blenkinsop. The council will go directly to her, even on the old appeals.

2. Wetlands Bureau Update

Collis Adams, Wetlands Bureau Administrator

Consequences of Hurricane Irene – they have been busy issuing emergency authorizations in the White Mountain area. They have issued approximately over 100 at this time. Some are for multiple locations. Established staff to manage phones full time and work daily on these authorizations. Rip-

rap being allowed because of the flash flood damage. Damage along the Saco River is extensive. Will probably be over 200 emergency authorizations before it is done. Review of applications has had to be moved back. All this emergency work is done without fees. There could possibly be FEMA money available. Most work is being done online with digital photos and phone calls. The agency is receiving compliments from the towns. Emergency authorization is to stop the damage and then the permit applications will come in and that will be 'Round 2' before spring run-off. The Commissioner has set up an internal task force to look at what to do for the future. It will identify needs, scope of the whole storm, and how to approach the final permitting for the permanent stabilization of river banks sections.

Received \$600,000 in EPA grants – one \$300,000 for watershed based approach to coordinate enforcement activities and the other \$300,000 is for integrated aquatic resource habitat restoration and protection program. This will provide important financial support. We have been informed we will not receive much in the coming years due to federal cuts.

There is work being done on an overall rewrite of wetlands rules, from Table of Contents to Appendices. The intent is to make them clearer, more concise, more applicable, easier to follow and easier to read. Perhaps prepare a companion document – a type of user guide. Look at a resource type and then look at a project type. Thanks directed to Gretchen Hamel for taking a lead in this. The goal is to have an in-house draft by end of March.

Comprehensive Shoreland Protection Act name changed now to the Shoreland Water Quality Protection Act. There also changes to vegetative criteria, 50 ft. buffer and establishes a permit by notification process similar to the other PBN processes.

3. Status of Appeals Continued.....

Docket No. 10-04 WtC – Thomas J. Murray Appeal

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status: The parties filed an Assented-to Motion to Continue the July 12, 2011, hearing. Motion was granted at the June 14, 2011, meeting. The hearing will be rescheduled for January.

Docket No. 10-08 WtC – Robert Reich

Subject: 4/19/10 Decision on Reconsideration, Wetlands File No. 2009-02050

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: A PHC was held on February 23, 2011 at 10:30 a.m. A hearing was scheduled for June 14, 2011 at 10:00 a.m. PO granted Assented-to Motion to Continue. New Hearing date is Oct. 11, 2011 at 10 a.m. Notice issued July 22, 2011.

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11.

Docket No. 10-12 WtC – Provencal One Family Trust

Subject: 6/4/10 Administrative Order No. 10-013 WD

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: A hearing was scheduled for June 28, 2011 at 8:00 a.m. The PO granted Appellant's Assented-to Motion to Continue. Hearing is rescheduled to September 27, 2011 at 9:00 a.m. Notice issued July 22nd.

Docket No. 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011) Recused himself from being PO, Larry Ballin was assigned 8/19/11.

Status: PHO issued on July 27, 2011, hearing scheduled for Nov. 8, 2011 at 9 a.m.

Docket No. 10-17 WtC and 10-24 WtC– Sunset Ranch Camp, Inc.

Subject: Decisions on Shoreland Permit Application, Wetlands File No. 2010-00690 and Standard Dredge and Fill Permit, Wetlands File No. 2010-00764

Presiding Officer: Ryan Crosbie

Status: A hearing was scheduled for July 26, 2011 at 9 a.m. The hearing date was established by 3/30/11 PHO. Notice does not appear to be an issue. On July 8, 2011, Appellant filed a Motion to Submit Photographic Images in Projected Form.

Appellant has withdrawn their appeal as of July 25, 2011.

Docket No. 10-18 WtC – MRAC LLC and Merchants Plaza, LLC

Subject: Application of NH Dept. of Transportation, Wetlands File No. 2010-00224

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: Pre-Hearing scheduled for August 31, 2011 at 10 a.m. Notice sent July 18, 2011. On Aug. 19, 2011, Appellant Withdrew Appeal.

Docket No. 10-19 WtC – Grouse Point Club

Subject: Decision on Reconsideration Denial, Wetlands File No. 2010-00808

Presiding Officer: Ryan Crosbie

Status: A hearing was scheduled for August 9, 2011 at 9:00 a.m. The hearing date was established in the 3/30/11 PHO. Appellant withdrew appeal on Aug. 1, 2011.

Docket No. 10-20 WtC – Robert Pinato

Subject: August 19, 2010 Administrative Order, Administrative Order No. 10-025 WD

Presiding Officer: Ryan Crosbie

Status: A hearing is scheduled for October 25, 2011, at 9:00 am. Amendment to Petition for Appeal rec'd June 30, 2011. Motion to Continue was filed 8/29/11. Objection to Motion to Continue was filed 8/30/11. Reply to Objection to Motion to Continue filed 9/1/11. PHO will work with counsel and proceed.

Docket No. 10-23 WtC – Charles and Patricia Sem

Subject: Administrative Order No. 10-033 WD dated September 21, 2010

Presiding Officer: Ryan Crosbie

Status: A PHC was scheduled for July 20, 2011 at 9:00 am. Notice was issued on June 29, 2011. Motion to Continue Pre-hearing Conference was received on July 18, 2011. PO granted Motion. PHC rescheduled to Sept 21, 2011 at 9:00 a.m. Notice sent August 4, 2011

Docket No. 11-03 WtC – Joseph and Patricia DeVelis

Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: Ryan Crosbie (assigned by AGO on May 2, 2011)

Status: Council accepted the appeal on April 12, 2011. A PHC was scheduled for August 1, 2011. Notice was issued on June 29, 2011. PHO issued 8/1/11 with Hearing scheduled for November 22, 2011 at 9:00 a.m.

Docket No. 11-06 WtC – John and Sharon Graham

Subject: April 11, 2011 Appeal of Administrative Order No. 11-014 WD

Presiding Officer: Larry Ballin (assigned by AG on 8/1/11)

Status: Council accepted the appeal letter, notice was sent on July 22, 2011. PO to schedule PHC.

Docket No. 11-07 WtC – Clinton and Cynthia Johnson

Subject: 4/27/11 Shoreland Impact Permit No. 2011-00115

Presiding Officer: Chip Kimball (assigned by AG on 8/1/11)

Status: Council accepted the appeal. The applicant filed a Motion to Strike portions of the petition on July 8. The Appellant submitted a Response to Motion to strike via email on July 11, 2011. Appeal accepted and applicant granted intervener status, letter was sent on July 22, 2011. PHC scheduled for Sept. 20, 2011 at 9 a.m., notice sent Aug. 8, 2011.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No.: 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Status request letter to be sent in September 2011.

Docket No.: 09-22 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Status: Appeal has been stayed until the agreement of July 1, 2010 is complete. Status request letter to be sent in September 2011.

Docket No. 10-15 WtC – Steven and Mary Pruchansky

Subject: 6/10/10 Decision on Reconsideration, Wetlands File No. 2009-023600

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: A PHC was held on February 23, 2011 at 9:00 a.m. The permit has been issued and the agent will withdraw the appeal once a settlement agreement is completed. Status request sent 7/18/11.

Rec'd response from DES 8/18/11 via email, this has been settled and permit issued.

- ***Councilor Crosbie made a motion to dismiss this appeal based on Env. WtC 244.04(g), second by Councilor Henderson. Motion passed unanimously.***

V. Misc.

3/31/09 Request for Declaratory Ruling filed by Mr. Goodwin

Chairman Kimball will review.

Docket No. 10-29 WtC – Constance Klefos Trust Appeal

Subject: 7/14/10 Denial of Request for Reconsideration of issued permit

Status: This was filed in 2010 and was inadvertently lost. An Insufficient Appeal letter was sent to attorney on Sept. 8, 2011.

08 – 20 originally given out as 08-17 – being reviewed for status.

5. **Old Business** - None

6. **New Business** - None

7. **Next Meeting** –

Next regular meeting will be Tuesday, October 11, 2011 beginning at 9 a.m. with the Robert Reich Appeal Hearing at 10 a.m.

8. **Adjournment**

- ***Councilor Sloan made a motion to adjourn, second by Councilor Prescott. Motion passed unanimously.***

Meeting adjourned at 9:08 a.m.

